

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Art Unit:
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H.J.M. Op Den Camp et al.)	Examiner:
)	
Serial No.: 10/500,872)	Washington, D.C.
)	
Filed: November 24, 2009)	January 22, 2010
)	
Patent No.: 7,622,284)	
)	
Issued: November 24, 2009)	
)	
For: TRANSFORMED ...)	Docket No.: OP DEN CAMP1
)	
		Confirmation No.: 1317

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

S i r :

Pursuant to 37 CFR 1.705(d), reconsideration of the patent term adjustment (**176** days) indicated on the face of the above-identified patent is hereby requested. The patent should have indicated a revised patent term to take into account the period of adjustment required by 1.704(b), which became known only once the patent issued.

In accordance with 37 CFR 1.705(b)1), submitted herewith is the fee of \$200 as set forth in 37 CFR 1.18(e). If there is any underpayment or any other fee necessary for consideration of this request, please charge same to the deposit account no. 02-4035 of the undersigned.

The following statement of the facts involved is in compliance with 37 CFR 1.705(b)(2).

1. The correct patent term adjustment is **564** days.

2. The date of commencement into the national stage under 371(b) in this PCT case was **July 23, 2004**, so 14 months later was **September 23, 2005**.

3. The PTO calculated the period of delay under 37 CFR 1.703(a)(1) as **429** days, based on the 371(c) date of December 6, 2004, (the period of time from **February 6, 2006** to the end of the "A" period on **April 11, 2007**, when the first office action under 35 USC 132 was mailed).

4. However, the calculation should have been based on the above-identified July 23, 2004, date. Thus, the period of time from September 23, 2005 (15 months from the date of commencement into the national stage under 371(b)), to the end of the "A" period on April 1, 2007, is calculated as **565** days. Accordingly, the applicant is entitled to **136** additional days ($565-429=136$) in the "A" period.

5. There are no adjustments under 1.703(a)(2)-(6).

6. The PTO also failed to take into account the non-overlapping period of delay under 37 CFR 1.703(b)(1). The period of time from the beginning of the "B" period on **July 23, 2007** (three years after the date of national stage commencement under 371(b) or (f) in a PCT national stage case) to the end of the "B" period on the filing of the first RCE on **March 31, 2008**, was **252** days.

7. There is no overlap within the meaning of 1.703(f), as interpreted by the U.S. District Court in *Wyeth v. Dudas*, 2008 U.S. Dist. LEXIS 76063 (D.D.C. September 30, 2008) between the "A" period ending **April 11, 2007** and the "B" period beginning **July 23, 2007**.

8. The patent is not subject to a terminal disclaimer.

9. The PTO correctly calculated the period attributable to applicant's delay as **253** days.

10. The correct patent term adjustment is the sum of the A period (**565** days) and B period (**252** days), minus the overlap (**0** days) and minus any period attributed to applicant's delay (37 CFR 1.704). Thus, the patent term adjustment should be **$565+252-0-253=564$** days.

11. This request is timely under 1.705(d), as this request is filed within two months of the

issue date. It is also noted that these issues could not have been raised on or before the date of payment of the issue fee (**November 24, 2009**) as the period under 1.703(b) did not become determined until the patent issued. Indeed, the PTO does not consider the effect of the “B” period until it mails the issue notification.

Accordingly, this request for reconsideration of the patent term adjustment must be permitted under 37 CFR 1.705(d).

Granting of this request and modifying the patent term adjustment afforded this case to a total of **564** days are therefore earnestly solicited.

Respectfully submitted,

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